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HB 119

House Bill 119
Chuck Hunter, House District 79, Sponsor
At the Request of the Department of Labor and Industry

House bill 119 is a "general revisions" bill: it contains a number of is housekeeping provisions, but it is also has more.

The bill has a lot of pages -34 – has a lot of sections, from a variety of places in the workers' compensation act – so it is not a simple or easy read.

So why do we have a bill like this?

Worker's compensation is a very active body of law.

- thousands of cases filed every year, each with unique facts
- hundreds of disputes, many of which go into court, where new interpretations are made
- variety of perspectives involved
    - workers
    - employers
    - insurers
    - medical professionals
    - regulatory folks at the Department of Labor and Industry
- All point out problems that arise in the management of our Worker's Compensation system

This bill is intended to fix problems in the system that have been identified by the Department and the other stakeholders, and to help keep the system running smoothly.

Because this is the first workers' compensation bill to appear in front of the committee, and since we have many new members, let me take just a few minutes to give some worker's compensation basics.

First, workers compensation is a state system – unlike other kinds of insurance like Medicaid or CHIP, there is no federal oversight or requirements.

Second this system represents a very long standing contract between employers and workers – a contract that has been around since 1915 in Montana, and around the country.

Here is the social contract this system represents:

Employers provide: Worker's compensation to workers, at the employers cost.

Employers receive: Freedom from being sued over workplace injuries – the exclusive remedy.

Workers receive: speedy access to medical treatment and wage loss benefits

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Workers give up: their right to sue for injuries, even if the employer is at fault.

Montana is a "three way state".

Employers must provide workers compensation insurance, but they have choices in how to provide that coverage.

Self-insurance, or Plan 1.

Under plan 1, employers must apply to the department for approval, and must provide evidence of solvency and ability to pay the cost of claims. They must also post security deposits, and participate in the self-insurers guarantee fund.

Purchase private insurance – Plan 2.

Over 200 insurance companies are authorized to write workers compensation coverage in Montana.

The State Compensation Insurance Fund, called "State Fund" is Plan 3.

State fund is an insurance company operated by the State of Montana. State fund cannot deny coverage except to employers, and is "the insurer of last resort".

And then there is the Department of Labor and Industry – the regulator of the Workers Compensation program in Montana.

It oversees the Workers Compensation and safety laws of Montana, and provides a wide variety or regulatory services.

Public policy statement – legislature.
Let's turn to the bill.

I am not going to go through the bill line for line, section by section. Mr. Keck from the Department will provide comment on each section.

Let me provide some overview on the sections that are more than simple housekeeping.

<u>Section 1</u>

This section gives authority to the Department to enter into agreements with tribal governments to recognize and give effect to tribal workers compensation plans or self insured plans that the department finds provide adequate coverage to persons who are:

a) employed by a tribal member or a tribal business, and
b) working outside the boundaries of an Indian reservation.

Why – if you went to "law school for legislators" yesterday, you learned that state laws have no jurisdiction on tribal lands, and vice versa.

This provision will all the state and tribal governments to coordinate workers comp coverage and regulation through agreement.

Next, Sections 5, 6, and 7

These sections are a full 8 pages of the bill, and adds a new definition under the list of employers for purposes of workers compensation (which therefore means coverage is required)

The bill proposes to add: a religious corporation, organization, or trust receiving *remuneration* for a project performed by its members – into the definition of employers.

Who are we speaking of?

In particular, Hutterite colonies, who frequently bid on and perform jobs, often in the construction industry – and often, in direct completion with other bidders.

Often, these organizations funnel their earnings into a trust, and then make distributions to their trust to all their members. In this way, they are able to avoid the payment of wages, and avoid the payment of workers compensation costs - thereby gaining a competitive advantage over other businesses.

These sections would clarify that these organizations, when performing work for pay, would be employers, would need to provide coverage, and establishes a method for calculating wages.

Section 8

This lengthy section covers a number of pages, but really deals with a few basic issues – the percentage rate charged to insurers for funding the administration of the regulatory system; and the method used by the department to set medical fees used in the workers comp system.

This administrative assessment has been around since the nineties, and is assessed to all insurers at a statutory 3% rate.

But simply put, the Department has found that it does not need the full 3% rate to fund their operation, and adopted administrative rules to lower the rate.

But the legislative auditor pointed out that the Department has no *authority* to lower the rate, because it is set in statute – and recommended that the department seek legislation to resolve the issue.

This section would allow the Department to collect *up to* 3%, allowing them to match their assessment with the annual regulatory cost - an example of a state agency doing the right thing.

Section 10 on page 19 will be eliminated via an amendment you will hear about, and a new section, dealing with a very recent court decision, will be proposed under this section. Mr. Keck will provide a detailed explanation.

Section 13, on pages 21 through 25, adopts national standards for setting fees for medical services, by proposing the use of standards developed by the Center for Medicare and Medicaid Studies, or CMS.

Those standards will both simplify billing for medical providers and allow for the use of the most up to date medical coding.

The section also proposes to change the data sources used in setting rates from disability insurers to group health insurers, because that data more closely correlates with the medical services provided under workers' compensation.

Finally, the section adopts a standard of 30 days for a payment of a medical bill after receipt by and insurer, and includes a companion provision that requires a medical provider to provide reimbursement of an overpayment to an insurer in the same 30 day timeframe. Late payment of medical bills has been a very common complaint in the system.

Section 15 on page 26 removes the 26 week restriction on temporary partial disability benefit payments – although like the current statute, the benefits will still be terminated when maximum medical improvement has been reached

This change is intended to enhance return to work opportunities for injured workers by using maximum medical improvement as the standard, and not have an arbitrary timeframe of 26 weeks.

My final comments regard Sections 18 and 19, on pages 29 through 32.

These changes deal with the subsequent injury fund, which was established to encourage employers to hire workers who have had a prior injury, and is funded by an assessment on all insurers.

Section 18 simplifies the application process for certifying an injured worker for the fund.

Section 19 raises the ceiling that the department may consider in deciding whether an assessment is necessary in any year – allowing them to avoid making small, nuisance assessments to insurers.

That brings my comments to a close, Mr. Chairman. I will turn it over to the Department to explain the bill in more expert detail, and also to explain the amendments that have been drafted.

Mr. Chairman, I would like to reserve the right to close, and I guarantee my close will by much shorter than my opening remarks.